THE INQUIRY COMMITTEE

v.

LEE HENG CHIANG

HIGH COURT SABAH & SARAWAK, KUCHING
PUAN ELIZABETH M. CHAPMAN JC
[ORIGINATING SUMMONS NO. KG. 183 OF 1992/(III)]
8 APRIL 1995

LEGAL PROFESSION: *Striking off the roll of advocates - Section 12 Advocates Ordinance (Sarawak Cap. 110) - Solicitor misappropriated sum from client's account - Convicted under s. 409 Penal Code - Whether Court to decide on appropriate punishment - Factors to be taken into account.*

The respondent had misappropriated a sum of RM40,000 being proceeds of a housing loan released by a client to the respondent. He was arrested and brought to the Sessions Court where he pleaded guilty to a charge under s. 409 of the Penal Code, and was sentenced accordingly. An application was made on behalf of the Inquiry Committee for the respondent to show cause as to why his name should not be struck off the roll of advocates pursuant to s. 12(e) of the Advocates Ordinance Sarawak (Cap. 110). The respondent had asked of the Court that he be suspended as striking off would be too harsh. The question the Court had to consider was whether the respondent should be struck off the rolls, fined, censured or whether a period of suspension from practice would be sufficient punishment.

Held:

[1] It is necessary to consider the nature of the offence of which the respondent has been convicted and the circumstances of the conviction and whether the said conviction would imply "a defect of character which unfits him for his profession".

[2] The respondent had been entrusted with the client's money and he had used the money in his client's account for his own purposes. Restitution was made after almost two years had lapsed and before he was charged in Court. This act of restitution by the respondent, however, does not absolve him from the crime.

[3] A conviction under s. 409 of the Penal Code should not be taken lightly. Honesty of lawyers is vital and it is only right that a high standard of conduct and integrity must be observed. What the respondent had done amounted to gross misconduct of the most serious character.

[Respondent struck off the rolls and to pay costs to be taxed]

Cases referred to:
Re G.H. Conaghan [1961] 27 MLJ 81 ***(refd)***
Re a Solicitor, ex-parte The Incorporated Law Society [1894] 1 QB 256 ***(refd)***
Re a Solicitor [1936] MLJ 192 ***(refd)***

Legislation referred to:
Advocates Ordinance (Sarawak Cap. 110), s. 12, 12(e)
Penal Code, s. 409
Rules of the High Court, O. 3 r. 6

For the applicant - Sulong Matjeraie; M/s. Sulong Matjeraie & Co
For the respondent - Sunny Sii; M/s. Si & Wee

JUDGMENT

Elizabeth M. Chapman JC:

On 24 September 1992 the High Court ordered a rule to issue to Lee Heng Chiang to show cause as to why s. 12 of the Advocates Ordinance (Sarawak Cap. 110) should not be invoked.

Section 12 of the Advocates Ordinance reads as follows:

> Any advocate may have his name struck off the roll of advocates, be suspended from practising in Sarawak, be fined not exceeding RM5,000, be censured or be awarded costs to or against him and any person entitled to appear and plead before the Federal Court by virtue of subsection 2 of s. 8 and any person referred to in para. (b) of s. 10 may be suspended from practising in Sarawak, or his right to practise in Sarawak withdrawn by order of a Judge ...

Hence this application is made on behalf of the Inquiry Committee for the respondent to show cause as to why his name should not be struck off the roll of advocates pursuant to s. 12(e) of the Advocates Ordinance. Section 12(e) of the said Ordinance reads as follows:

> If he has been convicted of a criminal offence implying a defect of character which unfits him for his profession.

Briefly, the undisputed facts are that the respondent had misappropriated a sum of RM40,000 being proceeds of a housing loan which Bank Utama (M) Bhd. had on 11 April 1988 released to the respondent trading under the name and style of Lee & Lee Company Advocates. The respondent was arrested and brought before the Sessions Court on 17 June 1991 where he pleaded guilty to a charge under s. 409 of the Penal Code. He was sentenced to 3½ years' imprisonment which was subsequently reduced by the High Court on appeal to 8 days' imprisonment and a fine of RM10,000 in default 18 months' imprisonment.

On this application to show cause why he should not be struck off the roll of advocates it is clear that the respondent does not dispute the conviction. What the respondent asks of the Court is that he be suspended as striking off would be too harsh. Counsel for the respondent also put forward the alternative submission that there was failure on the part of the applicant to comply with O. 3 r. 6 of the Rules of the High Court in that there was no notice of intention to proceed filed and served. Suffice it to say that O. 3 r. 6 applies to interlocutory proceedings before final judgment and has no application in this present case.

The question this Court has to consider is whether he should be struck off the rolls, fined, censured or whether a period of suspension from practice would be sufficient punishment. Whilst the applicant contends that the respondent should be struck off by reason of his criminal conviction under s. 409 of the Penal Code, Counsel for the respondent submitted that a suspension from practice for whatever period should be sufficient. In my view, it is necessary to consider the nature of the offence of which the respondent has been convicted and the circumstances of the conviction and whether the said conviction would imply "a defect of character which unfits him for his profession". I hasten to add here that in considering this application I have completely ignored annexure (b) annexed to the affidavit of Mr. Chan Kay Poh, the chairman of the Inquiry Committee.

Annexure (b) is a letter dated 3 October 1991 written by the respondent to the Registrar of the High Court Kuching, Sarawak wherein the respondent requested that his name be struck off the roll of advocates of the High Court of Borneo with liberty to reapply. It is obvious

that in writing this letter the respondent was at the material time under the mistaken impression that he could apply to have his name restored on the rolls whereas there is no such provision in the Sarawak Advocates Ordinance.

The respondent had in this case been entrusted with clients' money which came into his hands by virtue of his employment as solicitor for Bank Utama (M) Bhd. and he had used the money in his client's account for his own purposes. Restitution was made after almost two years had lapsed and before he was charged in Court. This act of restitution by the respondent, however, does not absolve the respondent from the crime.

In *Re G.H. Conaghan* [1961] 27 MLJ 81 where in that case the respondent acting in his capacity as solicitor had received RM40,000 from a third party for payment to a client had failed to do so and had instead knowingly applied it to other purposes, Thompson CJ said *inter-alia*

> ... there are three interests to be concerned. There is the interest of the solicitor; there is the interest of the legal profession as a whole; and there is the interest of the public. The legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards ... It is in the public interest that there should be a legal profession observing the highest possible standard of conduct.

A conviction under s. 409 of the Penal Code as is the case here should not be taken lightly. In our country where the profession is fused, lawyers are bound to receive money for and on behalf of clients. Honesty of lawyers is vital and it is only right that a high standard of conduct and integrity must be observed. As Wills J said in *Re A Solicitor ex-parte The Incorporated Law Society* [1894] 1 QB p. 256:

> Is it not his duty to take care that at all events his clients shall not be at a distinct disadvantage because he trusts to him for advice instead of going to some independent person? It is a principle which I should have thought so fundamental in guiding the relation not only of solicitors towards their clients, but of all persons who stand in confidential relation towards others. A trustee is not allowed to make out of his trusteeship any advantage to himself.

In *Re a Solicitor* [1936] MLJ 192 where a solicitor has been convicted of actual dishonesty such as misappropriation of money to his own use it was held he ought to be struck off the rolls and not merely suspended.

In this present case what the respondent had done amounted to gross misconduct of the most serious character. He had committed breach of trust of money belonging to his client. The money came into his hands by virtue of his employment as a client's solicitor. I have carefully considered the circumstances of the conviction and I am satisfied that the respondent's criminal conviction implies a defect of character which unfits him for his profession. In the circumstances I have no option but to order that the respondent be struck off the roll of advocates pursuant to s. 12(e) of the Advocates Ordinance and in addition to the order of striking him off the rolls I make further order that the costs of the occasioned by the Inquiry Committee and these proceedings be paid by the respondent to be taxed unless otherwise agreed.